THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No. 21878 of 2004

Dated: 27th Day of July 2005

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M. Bhaskar, s/o Sri M.Chandrasekhar, aged about 34 years, Occu: Regular Mazdoor, Office of D.E.™, M/s Bharat Sanchar Nigam Limited, Nalgonda, resident of Nalgonda & others.

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Petitioner

And

The Union of India, represented by the Secretary to Government, Department of Telecommunications, Ministry of Communications & Information Technology & others.

Respondent.

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No. 21878 of 2004

O R D E R:

This Writ Petition is filed seeking a Mandamus to hold that the petitioners are entitled for appointment as Regular Mazdoors with effect from 1.10.2000 with all consequential benefits.

Before adverting to the question as to whether the petitioners are entitled for appointment as regular mazdoors, requiring any direction as such by this

Court, in exercise of its writ jurisdiction, it may be necessary, briefly, to note the relevant facts leading to the filing of this writ petition.

The petitioners have been initially engaged as casual labourers on daily wages in the Department of Telecommunications, during the years 1978 to 1998, and continued in service without break. Thereafter they were converted into full time casual labourers, in accordance with the letters dated 16.9.1999 and 23.8.2000 and they were also appointed as 'Regular Mazdoors' with effect from the dates shown against each one of the petitioner in Annexure-I vide Memos dated 16.8.2002, 10.4.2003 and 18.9.2003. The petitioners further pleads that they are entitled for appointment with consequential benefits as 'Regular Mazdoors' with effect from 1.10.2000, in accordance with the instructions issued by the Department vide its letter dated 29.9.2000. On the other hand, one K.G.M.Reddy, who happens to be far junior to the petitioners, has been appointed as Regular Mazdoor with effect from 1.10.2000. Even though the petitioners are also entitled for regular appointment with effect from 1.10.2000, the said benefit is illegally and arbitrarily denied to them by the respondents-corporation, which leads to filing of this Writ Petition.

The respondents-corporation filed a common counter affidavit, contending that the writ petition does not disclose any valid cause of action and the same is misconceived. The Department initially engaged the petitioners as part-time casual labourers with less than 4 hours per day and it is not correct that they are casual labourers as averred in the Writ Petition. All the petitioners are working at Transmission Installation Southern Telecom Region, which are non-recruiting units and at other places, where there are no vacant posts available. Further, unless and until the casual labourers converted into full time labourers, the question of regularizing the service of the petitioners with effect from 1.10.2000 does not arise. The conversion of the part-time casual labourers into full-time casual labourers would be done after making over all assessment. The respondents-corporation further contended that the conversion of any part-time casual labourers is a condition precedent for regularization and later Nalgonda SSA converted all the petitioners into regular mazdoors during 2002 & 2003 and therefore, they are not entitled for regularization for full time casual labourers

with effect from 1.10.2000. The respondents-corporation by its proceedings, dated 29.9.2000, decided to regularize the service of those who have been granted temporary status with effect from 1.10.2000 only. Hence, the respondents-corporation prays to dismiss the Writ Petition.

The learned counsel for the petitioner contended that as per the policy of respondents, dated 29.9.2000, the service of the petitioners has to be regularized with effect from 1.10.2000 and admittedly the petitioners have been working with the respondents-corporation right from 1978. In the case of one K.G.M.Reddy, the services have been regularized as Mazdoor with effect from 1.10.2000 and therefore, he prays to allow the writ petition with a direction to the respondents to regularize the services of the petitioners with effect from 1.10.2000.

On the other hand, the learned standing counsel for the respondents-corporation contended that unless and until the casual labourers converted into full time labourers, the question of regularization of the petitioners with effect from 1.10.2000 does not arise. He contended that for the first time the petitioners have been converted into full time casual labourers in the year 2002-2003 and therefore, they are not entitled for regularization for full time casual labourers. It is not seriously disputed before this Court that the petitioners have been working as part time casual labourers in the respondents-corporation from 1978 onwards. The respondents-corporation by its proceedings dated 29.9.2000 decided to regularize those who have been granted temporary status with effect from 1.10.2000, in the following order:

1. All Casual labourers who have been granted temporary status up to the issuance of Orders No.269-4/93-STN-II dated 12.2.1999, circulated vide letter No.269-13/99-STN-II dated 12.2.99 and further vide letter No.269-13/99-STN-II dated 9.6.2000.

2. All full time casual labourers as indicated in the Annexure.

3. All part time casual labourers who were working for four or more hours per day and converted into full time casual labourers vide letter No.269-13/99-STN-II dated 16.9.99.

4. All part time casual labourers who were working for less than four hours per day and were converted into full time casual

labourers vide letter No.269-13/99-STN-II dated 25.8.2000.

5. All Ayas and Supervisors converted into full time casual labourers as per order No.269-10/97-STN-II, dated 29.9.2000.

The learned counsel for the petitioners placed strong reliance on these proceedings and requested the Court that the services of the respondents to regularize with effect from 1.10.2000. The condition precedent for regularization with effect from 1.10.2000 as per the above regulations by that time temporary status have been granted to the full time casual labourers. So, how long the petitioners are working as part time casual labourers that are not sufficient for regularization or conversion into a full time casual labour. A person cannot be regularized as per the proceedings and as per the counter also, unless that person is converted from part time casual labour into a full time casual labour. No proceedings have been placed before this Court to show that the petitioners, at the time of casual time labour service, have been converted into full time casual labourers prior to 29.9.2000. For the first time, the petitioners' proceedings dated 16.8.2002 and 10.4.2003 indicated that all the part time mazdoors have been regularized as mazdoors and appointed in the full time mazdoors, therefore, their services to be regularized with effect from the date of conversion from full time labourers. However, the learned counsel for the petitioners placed strong reliance on the proceedings of the Chief General Manager dated 28.4.2004, where one K.G.M. Reddy appointed as Regular Mazdoor with effect from 1.10.2000. A perusal of this order also shows that by the candidates regularized with effect from 1.10.2000, it was shown that he was in temporary status as Mazdoor. Therefore, there cannot be any difficulty, when a person as confirmed with a temporary status, then he is eligible for regularization with effect from 1.10.2000 as per proceedings of the respondents dated 29.9.2000. But no such confirmation of temporary status is granted to the writ petitioners. Therefore, the case of the petitioners stands on different footing with that of one K.G.M.Reddy. The learned counsel for the petitioners also relied on a decision reported in **M. Kasturi v. Senior Deputy Director General, BSNL, New Delhi and others**[1]**,** wherein it was held that:

"Had the respondents considered the case of the petitioner on the basis of

> the Circular dated 16.9.1999, the respondents would have realized that the petitioner has satisfied the requirement of working for 4 hours a day for 240 days in the preceding 12 months and in such an even he would have been converted into a full time casual labour and latter with temporary status."

Wherein also one of the conditions, as per the circular dated 29.9.2000 is found.

Learned counsel for the petitioners placed strong reliance that even posts, not available, the Chief General Managers are also authorized to create posts of Regular Mazdoors as per the prescribed norms, and to that extent, the prescribed ceiling for the circle will stand enhanced. The Chief General Manager has to create regular mazdoors only to adjust the casual labourers indicated from circular letter (1) to (5) in the circular letter dated 29.9.2000, the petitioners will not come within the purview of any of the cadres mentioned in column Nos. (1) to (5), because they have not been converted as full time labourers by the date of issuance of circular 29.9.2000. Therefore, the contention of the learned counsel for the petitioners cannot be accepted.

Viewed from any angle, the Writ petition is devoid of merits and is dismissed. No order as to costs.

JUSTICE K.C. BHANU

27th July 2005

BCS